



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USM ASSET TRUST SERIES-7,

Plaintiff,

-against-

COLONY INS. CO., et al.,

Defendants.

20-CV-1077 (BCM)

ORDER

BARBARA MOSES, United States Magistrate Judge.

For the reasons discussed in more detail on the record during the December 15, 2020 conference, the Court concludes that plaintiff USM Asset Trust Series-7 (USM) has failed to identify any relevant ambiguity on the face of any contract at issue in this action. Contrary to USM's contention (Dkt. No. 26, at 2), the "position" of defendant Colony Ins. Co. (Colony) as set forth in its summary judgment papers – namely, that "there is no written contract that requires [defendant] Empire [HD, Inc.] to name USM as an additional insured under its insurance policies" (Dkt. No. 23-1, at 1) – cannot "create[] potential ambiguities" in those insurance policies, or in the underlying Trade Contract between Empire and non-party Dixon Projects LLC. *See Greenfield v. Philles Records, Inc.*, 98 N.Y.2d 562, 569-70 (2002) ("Extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous, which is an issue of law for the courts to decide"); *Riverside S. Planning Corp. v. CRP/Extell Riverside, L.P.*, 13 N.Y.3d 398, 404 (2009) (quoting *Kass v. Kass*, 91 N.Y.2d 554, 566 (1998)) ("Ambiguity is determined by looking within the four corners of the document, not to outside sources[.]"); *accord Citibank, N.A. v. Jacobsen*, 2020 WL 7046841, at * 4 (S.D.N.Y. Dec. 1. 2020) (citing *Greenfield* and *Kass*).

Accordingly, plaintiff's request to conduct wide-ranging discovery as to the intent of the parties to the contracts, prior to responding to Colony's summary judgment motion, is DENIED.

Nothing in this Order prevents plaintiff from renewing the argument in its summary judgment opposition papers, nor from supporting that argument with affidavits or other extrinsic evidence that it can obtain without discovery.

Plaintiff's papers in opposition to Colony's summary judgment motion shall be submitted no later than **January 15, 2021**. Colony's reply papers, if any, shall be submitted no later than **January 29, 2021**.

Dated: New York, New York
December 15, 2020

SO ORDERED.

A handwritten signature in blue ink, appearing to read 'Barbara Moses', is written over a horizontal line.

BARBARA MOSES
United States Magistrate Judge